

808 KAR 10:030. Conduct of broker-dealers, agents, and employees; investment advisers and representatives.

RELATES TO: KRS 292.330

STATUTORY AUTHORITY: KRS 292.336(6), 292.500(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.336(6) authorizes the commissioner to promulgate administrative regulations regulating the conduct of business by broker-dealers and investment advisers. This administrative regulation establishes requirements relating to the conduct of a broker-dealer, agent, investment adviser, or representative.

Section 1. Definitions. (1) "Current brochure" or "current brochure supplement" means the most recent revision of the brochure or brochure supplement, including all amendments to date.

(2) "Sponsor of a wrap fee program" means an investment adviser that is compensated under a wrap fee program for:

(a) Sponsoring, organizing, or administering the program; or

(b) Selecting, or providing advice to clients regarding the selection of, other investment advisers in the program.

(3) "Wrap fee program" means an advisory program under which a specified fee or fees not based directly upon transactions in a client's account is charged for:

(a) Investment advisory services, which may include portfolio management or advice concerning the selection of other investment advisers; and

(b) The execution of client transactions.

Section 2. Suitability. A broker-dealer, agent, investment adviser, or investment adviser representative who recommends to a customer the purchase, sale or exchange of a security shall have reasonable grounds to believe that the recommendation is not unsuitable for the customer on the basis of:

(1) Information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs; and

(2) Other information known by the broker-dealer, agent, investment adviser or investment adviser representative.

Section 3. Supervision of Broker-dealer Agents. (1) Each agent shall be subject to the supervision of a supervisor designated by the broker-dealer employing the agent. The responsibilities of a designated supervisor with respect to each agent under his supervision shall include the prompt review and written approval of:

(a) The opening of each new customer account by the agent;

(b) Each securities transaction by the agent;

(c) All incoming or outgoing correspondence including postal mail, electronic mail, and faxes;

(d) All advertising, sales literature, and seminars; and

(e) The handling of any customer complaint.

(2) Either a registered principal of the broker-dealer or an agent's designated supervisor shall:

(a) Review outside business activity by the agent;

(b) Review any brokerage account owned by the agent;

- (c) Periodically review customer accounts of the agent; and
- (d) Regularly inspect the records of the agent at the agent's place of business.

Section 4. Written Supervisory Procedures. (1) Broker-dealers.

(a) Each broker-dealer shall establish, maintain and enforce written procedures that:

1. Are reasonably designed to detect and prevent violations of:

a. KRS Chapter 292, 808 KAR Chapter 10, and orders issued under that chapter;

b. The rules promulgated by the Securities and Exchange Commission pursuant to 15 U.S.C. 78w; and

c. If the broker-dealer is a member of a self-regulatory organization as defined in 15 U.S.C. 78c(a)(26), the rules of the self-regulatory organization pursuant to 15 U.S.C. 78s(b); and

2. Include the procedures adopted by the broker-dealer to comply with the requirements of Section 3 of this administrative regulation.

(b) The broker-dealer shall keep a copy of the procedures required by paragraph (a) of this subsection in each office where an agent transacts business in securities.

(2) Investment advisers.

(a) Except as provided in paragraph (b) of this subsection, each investment adviser shall:

1. Establish, maintain, and enforce written procedures that are reasonably designed to detect and prevent violations of KRS Chapter 292, 808 KAR Chapter 10, and orders issued under that chapter; and

2. Keep a copy of the procedures in each office where a representative provides investment advice to a client.

(b) The requirements established in paragraph (a) of this subsection shall not apply to an investment adviser that:

1. Has its principal place of business in a state other than Kentucky if the investment adviser is registered in that state and is in compliance with that state's written supervisory procedures requirements; or

2. Has two (2) or fewer persons registered as an investment adviser representative of the investment adviser.

Section 5. Brochure and Brochure Supplement. (1) An investment adviser shall:

(a) Deliver to a client or prospective client a current brochure and, if applicable, current brochure supplement for a supervised person. The current brochure and current brochure supplement shall:

1. Contain all information required by Part 2 of Form ADV as incorporated by reference in 808 KAR 10:010; and

2. Be delivered before or at the time of entering into an investment advisory contract with that client;

(b) Deliver to each client annually, within 120 days after the end of the investment adviser's fiscal year and without charge:

1. A current brochure; or

2. The summary of material changes to the brochure as required by Item 2 of Form ADV, Part 2A that offers to provide the current brochure without charge, accompanied by the Web site address (if available) and an e-mail address (if available) and telephone number by which a client may obtain the current brochure, and the Web site address for obtaining information about the investment adviser through the Investment Adviser Public Disclosure (IAPD) system; and

(c) Deliver the following to each client promptly after creating an amended brochure or brochure supplement, as applicable, if the amendment constitutes a material revision:

1. The amended brochure or brochure supplement, as applicable, along with a statement describing the material revision; or

2. A statement describing the material revision.

(2)(a) If an investment adviser is a sponsor of a wrap fee program, then the brochure that this section requires the investment adviser to deliver to a client or prospective client of the wrap fee program shall be a wrap fee program brochure containing all the information required by Part 2A, Appendix 1 of Form ADV. Any additional information in a wrap fee program brochure shall be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(b) An investment adviser does not have to deliver a wrap fee program brochure if another sponsor of the wrap fee program delivers, to the client or prospective client of the wrap fee program, a wrap fee program brochure containing all the information required by Part 2A, Appendix 1 of Form ADV.

(c) A wrap fee program brochure shall not take the place of any brochure supplements that the investment adviser is required to deliver under this section.

(3) If an investment adviser provides substantially different advisory services to different clients, the investment adviser may provide them with different brochures, if each client receives all information about the services and fees that are applicable to that client. The brochure delivered to a client may omit any information required by Part 2A of Form ADV if the information does not apply to the advisory services or fees that are provided or charged, or that are proposed to be provided or charged, to that client.

(4) This section shall not relieve an investment adviser from an obligation, pursuant to a provision of KRS Chapter 292, 808 KAR Chapter 10, or other federal or state law, to disclose information to its advisory clients or prospective advisory clients not specifically required by this section.

Section 6. Multiple Registration. (1) A person shall not be concurrently registered as an agent of more than one (1) broker-dealer or issuer unless the person obtains prior written consent from the commissioner.

(2) A person shall not be concurrently registered as an investment adviser representative of more than one (1) investment adviser unless the person obtains prior written consent from the commissioner.

(3) A request for multiple registration shall be in writing and shall contain a statement by each employer that the employer:

(a) Consents to the multiple employment of the agent or representative; and

(b) Agrees to assume joint and several liability with all other employers for an act or omission of the agent or representative during the employment period that violates KRS Chapter 292, 808 KAR Chapter 10, or orders issued under that chapter.

(4) The commissioner shall consent to multiple registration pursuant to a request under subsection (3) of this section if the commissioner finds that:

(a) The multiple registration does not impair a determination of the supervisory responsibilities of each employer with respect to the employee; and

(b) The disciplinary histories of the person and each employer are not unfavorable.

(5) The commissioner may consent to multiple registration in other cases if the commissioner finds that the multiple registration does not impair determination of the respective supervisory responsibilities of each employer with respect to the employee. (SR 330(11)(f)-2; 1 Ky.R. 1094; eff. 6-11-75; 24 Ky.R. 2174; 25 Ky.R. 85; eff. 6-25-98; 26 Ky.R. 2042; 27 Ky.R. 770; eff. 9-11-2000; 37 Ky.R. 2484; 2837; eff. 7-1-11.)